IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER

S.B. Civil Writ Petition No.5800/01
Nand Kishore & Ors. Vs. Laddu & Ors.

Date of Order :: 8nd January, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr. Praveen Jain, Advocate for petitioners.
Mrs. Sharda Pathak for respondents.

Heard learned counsel for the parties.

The petitioners in this case have challenged the order dated 15.12.90 whereby the Assistant Collector, Uniyara rejected their application filed u/s. 180 of the Rajasthan Tenancy Act seeking ejectment of the respondent no.1 to 3. This order was subjected to successive appeals before the Revenue Appellate

Authority and the Board of Revenue who both rejected the same by orders dated 19.8.99 and 23.9.1999. The petitioners then filed review petition before the Board of Revenue which was also rejected on 10.3.2000. This is how they are now being assailed before this Court in the present writ petition.

Contention of the learned counsel for the petitioners is that the learned Assistant Collector has wrongly rejected his application under Section 180 of the Rajasthan Tenancy Act on the ground of limitation. The Assistant Collector has wrongly concluded that such application filed by the petitioners was barred by the period of limitation. Conclusion drawn by the Assistant Collector was contrary to the Schedule III of Section

68 of the Rajasthan Tenancy Act. Specific assertion was made by the petitioners that the land in dispute was given to the private respondents for cultivation on year to year basis and therefore when they were required to vacate the same in Svt. 2037-38 and when they did not handover the vacant possession, it is then that the cause of action arose and within three years thereafter the application u/s. 180 was filed on 4.7.83. It is further argued that the learned Court below committed an error of law in also recording a finding on merits of the case which was neither permissible nor warranted when they decided to reject the application on the ground of limitation. According to the learned counsel, such an approach on the part of the Court below

has seriously prejudiced his case in as much as he has been put to a disadvantageous position because such finding would adversely affect his case when he files a regular suit. He, therefore prayed that the impugned order be set aside.

On the other hand, learned counsel for the respondent argued that the petitioners could not prove by lead of any evidence whatsoever that this land was given to the private respondents for cultivation on year to year basis in as much as he also could not prove the fact that any agreement ever existed between them for year to year cultivation. He therefore submits that the learned Assistant Collector did not commit any error of law in rejecting the application

as time barred so also the learned Revenue Appellate Authority and the Board of Revenue have rightly upheld the order passed by the Assistant Collector. Once when the petitioners filed an application and also raised certain arguments on merits of the case, the Court below was required in law to examine the matter and arrived at the conclusion one or the other way. It cannot be therefore said that while deciding the application, the learned Court below erred in law in rejecting the same both on the ground of delay as also on merits. It is therefore prayed that the writ petition be dismissed.

On perusal of the order passed by the learned Assistant Collector I find that he has made a specific reference to

the law on the question and also the fact that private respondents were in cultivatory possession of the land in dispute even prior to the date of commencement of Rajasthan Tenancy Act and therefore they acquired the khatedari rights. He concluded that possession of the respondents being more than 65 years old, the application filed u/s. 180(1) was time barred. Besides, the petitioners did not pointedly state as to under which of the clauses of Section 180 the application was being filed. The learned A.C.M. thus concluded that the application was barred by limitation as per the IIIrd Schedule. One of the arguments which has been raised by the learned counsel for the petitioners is that as per the III Schedule to Section

68(2) of the Act, the period of limitation would be one year but on perusal of the relevant provisions of the said schedule such an argument is found to be only misconceived because the relevant clause in Schedule III of Section 68 of the Rajasthan Tenancy Act provides for the limitation of three years for filing application u/s 180 (supra) and not one year. Even otherwise, if the period of limitation is three years or one year, that would not make any difference to the ultimate conclusion because bone of the contention between the parties is the starting point of limitation. The learned Revisional Authority and Board of Revenue in my view, have not committed any error of law.

I, therefore, do not find any merit in the writ petition. The writ petition is therefore dismissed with no order as to costs.

(Mohammad Rafiq),J.

RS/-